

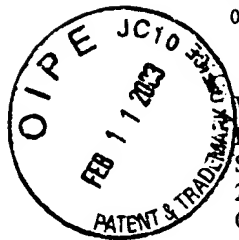


007-1007

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,967	11/14/2001	Eleanor L. Schuler	0607-1007	6784



7590 01/07/2003

William M. Lee, Jr.
Lee, Mann, Smith, McWilliams, Sweeney & Ohlson
Suite 410
209 S. LaSalle Street
Chicago, IL 60604

EXAMINER

YU, JUSTINE ROMANG

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/07/2003

Response due 2/7/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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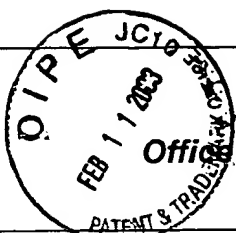
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Office Action Summary

Application No.

09/992,967

Applicant(s)

SCHULER ET AL.

Examiner

Justine R Yu

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to a vibrator, classified in class 601, subclass 46.
 - II. Claims 12-17, drawn to a method for non-invasively treating cardiac irregularities via stimulation, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the vibrator as claimed can be used in a materially different process of using that product such as a massager.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. A telephone call was made to Mr. William M. Lee on 1/6/03 to request an oral election to the above restriction requirement, but did not result in an election being made.

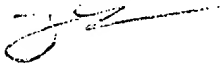
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

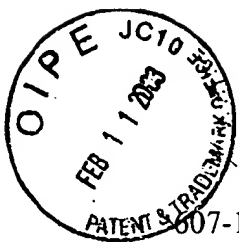
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Justine R Yu
Primary Examiner
Art Unit 3764

JY
January 6, 2003



3764
none

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF

Eleanor Schuler

SERIAL NO.: 09/ 992,967

FILED: November 14, 2001

FOR: DEVICE AND PROCEDURE TO TREAT
CARDIAC ATRIAL ARRHYTHMIAS

)
) Examiner: Justine Romang Yu
)
) Group Art Unit: 3764
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to " Director of Patents and Trademarks, Washington, D.C. 20231" on February 6, 2003.
Name of person signing Jennifer J. Ramirez
Signature: _____

NOTICE OF CHANGE OF FIRM NAME

Honorable Director of
Patents and Trademarks
Washington, D.C. 20231

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FEB 20 2003

TECHNOLOGY CENTER R3700

Dear Sir:

The name of the firm of the undersigned has changed to:

Barnes & Thornburg.

The address and telephone numbers are unchanged.

February 6, 2003

Respectfully submitted

William M. Lee, Jr.
Registration No. 26,935
Barnes & Thornburg

P.O. Box 2786
Chicago, Illinois 60690-2786
(312) 368-6620
(312) 368-0034 (fax)

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